

Disciplinary

Misconduct Procedure

A model for Schools



CHANGES – MARCH 2006

Procedure

3.3	Roles & Responsibilities	Removal of options. Adoption of the Policy assumes that the Governing Body has delegated dismissal decisions to the Headteacher as required by the School Staffing Regulations (other than where the head has had prior involvement).
8.1	Possible outcome of hearing	Removal of length of service as specific consideration – covered by consideration of general record
9.2	Notification of outcome of hearing	Clarification that notice is given/dismissal is effective after first hearing – can be rescinded if appeal upheld
12.2	Meetings	Include reference to accommodation meeting special needs of attendees
Appendix A	Gross Misconduct	Update to make specific reference to child protection/safeguarding issues

Manager's Guidance

7.4	Allegations involving vulnerable people	Slight rewording to include referral to Secretary of State and General Teaching Council.
7.5.1	The decision	Length of service changed to good conduct as consideration in determining penalty
8.4	Dismissal	Remove sentence regarding summary dismissal and suspension pending appeal
10.2.4	Appeal decisions	Amended to clarify payment where appeal overturns decision to dismiss.
Appendix B	Hearing/Appeal Procedure	Include opportunity to recall witnesses for clarification on evidence given
Appendix C	Fair Disciplinary Decisions	Revised framework for decisions based on experience and legal advice

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Model Disciplinary (Misconduct) Procedure for Schools

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Staff Disciplinary Procedure (Misconduct)

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1. INTRODUCTION

- 1.1 The Governing Body is committed to being a fair and reasonable employer and it takes this commitment seriously. It recognises that instances may arise in which managers are dissatisfied with the conduct of an employee and that in such cases there is a need for a formal procedure through which the issues can be identified without delay and appropriate action taken in a consistent and non-discriminatory manner.
- 1.2 The day to day supervision of staff is part of the normal management process and is outside the formal procedure for dealing with breaches of discipline. There is likely to be less recourse to the formal procedure if deficiencies in an employee's conduct are brought to his/her attention at the earliest possible stage by his/her immediate supervisor in the course of that person's normal duties. The Governing Body intend that informal measures are adopted wherever possible.
- 1.3 The object of the formal procedure is to provide a framework to deal with employees whose standard of conduct continues to fall short of that required by the Governing Body after any informal action. It is also designed to encourage an employee whose standard of conduct is unsatisfactory to improve.
- 1.4 This procedure takes due account of the ACAS Code of Practice on Disciplinary Procedures, and accords with employment and education legislation.

2. SCOPE

- 2.1 This Procedure is applicable to all staff (including the headteacher), employed specifically for the purposes of the school, except those staff who have not completed a probationary period, and where appropriate, those with less than one year's service. While the principles of reasonableness and natural justice reflected in the Procedure will apply to these staff, it may be necessary to foreshorten the Procedure, its processes and relevant timescales in keeping with the particular nature of their employment.
- 2.2 Where an employee's failure to perform satisfactorily relates to his/her capability, rather than conduct, this will be dealt with through the separate capability procedure.
- 2.3 Where misconduct relates to a child protection issue, Essex Child Protection Procedures (the Blue Book) must be followed. Reference will also be made to the advice document 'Personnel Related Child Protection Procedures'.

2.4 Disciplinary rules

The types of issue which could result in disciplinary action being taken are outlined in Appendix A.

2.5 Trade Union Officials

- 2.5.1 No formal disciplinary action will normally be taken against a recognised shop steward, or other accredited official of a trade union or professional association

recognised by the Governing Body and/or the Authority, until the circumstances of the case have been discussed with a senior trade union representative or full-time official of the trade union concerned.

2.5.2 No disciplinary action will be taken against any employee in respect of alleged misconduct which arises from trade union duties or activities, until the matter has been discussed with a senior trade union representative or full-time official of the trade union concerned.

3. ROLES AND RESPONSIBILITIES

3.1 It is the responsibility of the Governing Body to:

- define and communicate disciplinary rules;
- ensure that systems are in place for the proper induction for new and promoted staff, day to day management and performance management of staff to ensure that minor deficiencies in conduct are dealt with effectively without recourse to the formal procedure;
- ensure that appropriate disciplinary procedures are in place, are monitored and reviewed regularly and are implemented in a fair and consistent manner;
- consult staff regarding these procedures prior to adoption;
- suspend staff where appropriate (chair of governors);
- establish, where appropriate, disciplinary and disciplinary appeals committees.

3.2 It is the responsibility of the headteacher and other managers to:

- ensure that appropriate pre-employment checks are carried out;
- ensure that staff are aware of disciplinary rules and procedures and deal with any minor deficiencies in conduct at the earliest stage through normal day to day supervision;
- ensure that, where necessary, disciplinary procedures are carried out promptly and fairly;
- suspend staff where appropriate (headteacher only).

3.3 Where the conduct of the headteacher is called into question, the governing body shall depute a governor to operate the disciplinary procedure. In this case, any formal hearing shall be heard by the Governing Body Disciplinary/Dismissal Committee.

3.3.1 Where possible, and other than where it relates to the headteacher, the disciplinary procedures will be operated by a manager other than the headteacher.

3.3.2 Where the manager recommends a disciplinary sanction, including dismissal, a hearing will take place before the headteacher who will adjudicate on the matter. The headteacher may be accompanied by a governor(s), but the decision will rest with the headteacher.

3.3.3 Where the headteacher has been directly involved in procedures leading to a recommendation of a disciplinary sanction, has instigated the process or is a witness to particular conduct relevant to the action, a hearing will take place before the Governing Body Disciplinary/Dismissal Committee.

3.3.4 All appeals will be heard by the Governing Body Disciplinary/Dismissal Appeals Committee.

3.4 It is the responsibility of all staff to:

- be aware of and comply with general rules and procedures referred to in their contract and conditions of service and the specific working rules and procedures related to their area of work;
- comply with the school's disciplinary and other procedures and to co-operate with the processes contained therein.

4. REPRESENTATION

4.1 An employee is entitled to be accompanied by a trade union/professional association representative, colleague, friend or other appropriate person, at all formal meetings, hearings and appeals. The employee must make his/her own arrangements for this.

4.2 Such representatives should make themselves available to accompany the employee concerned within a reasonable period of time. If however, the employee's chosen companion is not available, for a reason that was not reasonably unforeseeable, at the time proposed for any meeting or hearing, one alternative date will be set, normally no later than five working days from the original date.

5. INVESTIGATIONS

5.1 Where an employee's conduct is called into question an appropriate manager (the 'investigating officer') will conduct such investigations as s/he may consider necessary. The purpose of the investigation is to gather sufficient information to determine whether or not the matter needs to be pursued formally at a disciplinary hearing. Where appropriate, the employee will be given ample opportunity to state his/her case and the investigation may involve interviewing witnesses, other relevant parties and taking statements.

5.2 All reasonable effort will be made to complete the investigation without delay.

5.3 If, following the investigation, the investigating officer considers that disciplinary action is necessary s/he shall arrange for this to be undertaken in accordance with 7. below, except where, by agreement between the parties, the matter is dealt with by other means (see 5.6).

5.4 Formal disciplinary action will not be taken against an employee without prior investigation, other than in exceptional circumstances.

5.5 Where an employee admits an allegation, it may not be necessary for the investigating officer to carry out a lengthy investigation. Any hearing in these circumstances would be to consider the allegation, the employee's admittance and any mitigation they wish to put forward.

5.6 It will be open to an employee to accept a proposed disciplinary sanction without being subject to the full normal Procedure. This is called an 'agreed outcome'.

5.7 In certain circumstances, the investigating officer may conclude that formal disciplinary action is not necessary but that professional advice should be given to the employee. This will be in the form of a letter of expectation which will be placed on the employee's file.

6. SUSPENSION

6.1 Suspension may be effected normally only where:

- there is a risk to others within the school;
- the allegations are so serious that dismissal for gross misconduct would be a possible outcome
- allowing the member of staff to remain at work could hinder the investigatory process.

6.2 Where appropriate, suspension will only be applied after alternative measures e.g. a temporary reallocation of duties or relocation have been carefully considered.

6.3 Only the chair of governors and the headteacher have the power to suspend a member of staff.

6.4 Suspension can only be ended by the chair of governors or the governing body.

6.5 During a period of suspension, the employee will receive his/her contractual pay. Where an employee falls sick during a period of suspension, the normal contractual sick pay entitlements will apply.

7. DISCIPLINARY HEARINGS

In summary, the minimum statutory disciplinary procedure which will be followed is as follows:

1. Written statement and invitation to meeting	<ul style="list-style-type: none"> • Employer must send a written statement detailing the nature and basis of the concerns and inviting the employee to attend a meeting to discuss it
2. Meeting	<ul style="list-style-type: none"> • A meeting must take place before any action is taken • There shall be no meeting unless Step 1 has been followed • The employee must take all reasonable steps to attend • After the meeting employer must inform the employee of the outcome and their right of appeal
3. Appeal	<ul style="list-style-type: none"> • If the employee wishes to appeal, s/he must inform the employer • If the employee does so, the employer must invite him/her to a further meeting • The employee must take all reasonable steps to attend • The employer must inform the employee of the final decision

7.1 If after investigation, the investigating officer considers that a formal sanction or dismissal is appropriate, s/he will refer the matter to a formal hearing. Disciplinary hearings will be carried out without undue delay.

- 7.2 The employee will be given at least ten working days' notice, in writing, of the date, time and place of any disciplinary hearing. When given this notice, the employee will be:
- (i) informed of the nature and details of the alleged misconduct;
 - (ii) informed of his/her right to be accompanied at the hearing by a representative (see 4. above) and of his/her right to call witnesses;
 - (iii) supplied with a copy of the investigating officer's written report which is to be considered at the hearing, including any witness statements;
 - (iv) given an indication of the possible disciplinary penalty which could be imposed if the allegations were found to be substantiated, e.g. a formal warning or termination of employment by dismissal;
 - (v) informed who will conduct the hearing and the name of the presenting officer, including any advisers either may have and the names of any witnesses* to be called;
 - (vi) given a copy of the school's disciplinary procedure..
- 7.3 Not later than three working days before the hearing the employee:
- (i) must supply the name and status of his/her representative;
 - (ii) must supply the names of any witnesses* s/he intends to call and an outline the evidence they will give;
 - (iii) may submit a written statement or other supporting written evidence if s/he wishes, either direct or through his/her representative.
- * Both the presenting officer and the employee should give careful consideration to whom they call as witnesses, limiting the numbers to the minimum necessary to support their case.
- 7.4 At the hearing the employee and/or his/her representative and the person presenting the case may:
- (i) address those conducting the hearing;
 - (ii) be questioned by the other party and by those hearing the case, on the statements made by them and on any evidence they have submitted;
 - (iii) question the other party on any relevant aspect of his/her evidence;
- 7.5 Witnesses called by either party may be questioned by the other party and by those hearing the case.
- 7.6 An opportunity will be given at the end of the process for both parties to make a summary statement of their case. The employee or his/her representative will have the right to speak last.
- 7.7 Employees are required to take all reasonable steps to attend hearings. Hearings may be re-arranged once where either party or their representatives are unable to attend for a reason that was not reasonably foreseeable. Where an employee fails to provide a good reason for non-attendance, those hearing the case will make a decision about whether or not to proceed.

8. POSSIBLE OUTCOMES OF HEARING

- 8.1 Where those hearing a formal disciplinary case conclude that there is sufficient evidence to support the allegation(s), they may apply an appropriate sanction,

including dismissal. Any decision of the hearing will satisfy the test of reasonableness in all the circumstances and any sanctions will be proportionate to the nature of the misconduct. Account will be taken of:

- the employee's disciplinary and general record;
- any explanation or mitigation put forward by the employee;
- any action taken in similar situation;
- any other relevant factors.

8.2 Depending on the circumstances, disciplinary action could take the following forms:

- i) Oral warning e.g. for misconduct which is considered to be of a minor nature.
- ii) Written warning e.g. where there has been a failure to conform to standards following an oral warning or the misconduct is serious.
- iii) First and final written warning e.g. where the misconduct is considered to be more serious.
- iv) Dismissal with notice e.g. where conduct has failed to improve following previous warning(s).
- v) Summary dismissal e.g. where an act of gross misconduct has been committed.

8.3 Time limits for disciplinary warnings

Normally, the validity of disciplinary warnings will be considered to have expired after one year provided that no further warnings have been issued and no disciplinary action has been taken against the employee during that period. Expired warnings will generally (see exceptions below) be disregarded in the event of any future disciplinary action but a record of the warning will not be removed from the personal file.

There may be occasions, however, where the nature of the offence and the post concerned do not make it desirable and appropriate for the one year time limit to apply. In these circumstances the employee will be notified in writing of the period applicable to the warning, which will not normally exceed 5 years. Exceptionally, there may be circumstances where the misconduct is so serious, relating for example to the care of vulnerable people, that it cannot be disregarded for future disciplinary purposes. In such circumstances, the written warning can never be disregarded and any recurrence may lead to dismissal.

In certain circumstances, the employee may be given a letter which sets out expectations about their future conduct. Such a letter of expectation is not a formal disciplinary sanction and will be placed on the employee's personal file.

9. NOTIFICATION OF OUTCOME OF DISCIPLINARY HEARING

9.1 Where possible the decision of the hearing will be notified verbally to the employee at the end of the hearing. In any case the employee will be issued with a written notification of the outcome within five working days of the hearing.

9.2 In case of dismissal, this letter will contain notice, where appropriate, of dismissal. This may be rescinded subsequently

- 9.3 Employees will be asked to sign a copy of such notifications to confirm that they have received and understood them.

10. APPEALS

- 10.1 An employee has a right of appeal against any disciplinary sanction reached at a disciplinary hearing, including an extension of the time limit for written warnings. An employee may forego his/her right to appeal.
- 10.2 Notice of any appeal must be given in writing to the Chair of Governors within five working days of the written notification to the employee of the outcome of the disciplinary hearing, clearly stating the grounds upon which the appeal is made. These may be, for example:
- on procedural grounds,
 - against the severity of the disciplinary action, or
 - where the employee considers that there has been an error of judgement on a point of fact.
- 10.3 All appeals will be heard by the Governing Body Disciplinary/Dismissal Appeal Committee. The decision of this Committee is final, subject to the employee's rights at law.
- 10.4 The appellant will be given at least seven days' notice of the appeal hearing in writing. An appeal hearing will normally be a rehearing and the procedure will be as for the original hearing.
- 10.5 New evidence, provided it is relevant to the original allegation(s), can be introduced at the appeal stage by either party. All parties' papers must be submitted to the other party and the Appeals Committee at least 3 working days before the appeal hearing.
- 10.6 The outcome of the appeal will be notified as for the original hearing, except in that there is no further right of appeal within these procedure (see 10.3).

11. RECORDS

- 11.1 Notes of hearings and meetings with the employee will be taken and shared with him/her.
- 11.2 Details of any formal disciplinary action, including any warnings will be retained on the employee's personal file. Sanctions will be disregarded after the expiry of their life. (see also 8.3)
- 11.3 Letters of expectation are not disciplinary sanctions and will remain on the employee's personal file indefinitely.
- 11.4 If an investigation or hearing concludes that an allegation is totally unsubstantiated, all records will be removed from the employee's personal file. The only exception would be where the allegation relates to issues around care of vulnerable people.

11.5 Details of any ongoing disciplinary action and/or sanctions may be referred to in an employee reference requested of the school. Only such information as has been discussed with the employee will be referred to.

12. TIMING/LOCATION OF MEETINGS/HEARING

12.1 Where possible and appropriate, timings of meetings and hearings will be agreed with the employee and will normally take place during the working day.

12.2 Where possible meetings and hearings will be held at a mutually convenient location, which meet any special needs of attendees, which may sometimes be away from the school where this is considered to be appropriate.

12.2 Reasonable time off with pay will be granted to employees of the school who are acting as a witness or representative for an employee who is subject to the disciplinary process.

13. GRIEVANCES

13.1 An employee may raise a grievance in the course of the disciplinary procedure, related to the case.

13.2 Where the employer is contemplating or actioning a disciplinary sanction including dismissal, and where the written grievance is submitted prior to the appeal hearing, the grievance will normally be dealt with as part of the formal disciplinary hearing/appeal process.

13.3 In certain other circumstances, it may be necessary to suspend the disciplinary procedure while until the grievance is considered under the School's Grievance Procedure.

Appendix A – Disciplinary Rules

Employees need to be aware of the standards required from them in the course of their normal day to day duties and the possible consequences of any failure to adhere to maintain these standards. Listed below are the types of issues which could result in disciplinary action being taken.

Misconduct of a minor, or serious nature may result in a first, first and final or final written warning being issued. Acts of gross negligence or cumulative or repeated acts of misconduct may lead to dismissal with notice.

Gross Misconduct is defined as misconduct of such a serious nature that the School is justified in no longer tolerating the employee's continued presence at the place of work. An allegation of gross misconduct will normally lead to suspension, pending an investigation. Instances of gross misconduct can lead to summary dismissal (i.e. dismissal without notice) where the allegations are substantiated. There may be situations where misconduct which would normally lead to summary dismissal may warrant less serious action. Similarly, there may be situations in which misconduct which would not normally lead to summary dismissal warrants such action.

Misconduct

Examples of misconduct where a form of warning may be issued, or where cumulative or repeated acts could lead to dismissal are as follows:

- Attendance and Time-keeping
 - continuing failure to comply with attendance and time-keeping requirements
 - continuing failure to follow procedures for booking and returning from leave
 - absenteeism and unauthorised absence from the workplace
- Behaviour
 - refusal or failure to follow a legitimate management instruction
 - inappropriate behaviour or abuse of authority towards a colleague or member of the public or person in the care of the School
 - insubordination
 - failure to comply with the School's equal access to opportunities policy
 - conduct at work which is likely to offend decency
 - conduct which could bring the School into disrepute
 - refusal to comply with the School's no-smoking policy
 - negligence in the performance of duties
 - misuse of School facilities
 - abuse of School policies e.g. parental leave
- Poor Working Practices
 - failure to maintain proper records
 - failure to follow School procedures e.g. financial regulations, standing orders
 - failure to comply with health and safety requirements
- General
 - misconduct in relation to official documents e.g. destroying or mutilating records kept or required for the purposes of the School or altering/erasing or adding to entries in any such document without legitimate reason
 - neglect of health e.g. committing an act or adopting conduct which may impede recovery and return to work whilst absent from work due to sickness
 - engaging in paid employment outside the hours contracted to work for the School if scp 28 or above and without the express permission of the School
- Any other act of misconduct of a similar gravity

Gross misconduct

Examples of misconduct which will normally be regarded as gross misconduct are:

- Unauthorised removal of the School's property
- Stealing from the School, its governors, its employees or the public and other offences of dishonesty
- Sexual offences
- Breaches of the School's Equal Access to Opportunities policy, including
- Serious acts of harassment, discrimination or verbal abuse against employees, clients or members of the public on grounds of race, sex, disability or religious belief or any other grounds
- Fighting
- Physical assault
- Harming pupils in breach of child protection/safeguarding regulation and policy and Abuse of Trust
- Falsification of time sheets, flexible working hours data or subsistence and expenses claims, sickness self-certification sickness forms, etc.
- Offences which seriously threaten the security of the School's clients, members of the public, employees or property or which seriously damages public confidence in the School
- Deliberate misuse of data protection information and/or deliberate interference with computerised information
- Falsification of qualifications which are a stated requirement of employment and which result in financial gain
- Malicious damage to the School's property
- Serious breaches of Health and Safety legislation and/or the School's Health, Safety and Welfare Policy e.g. intentional or reckless interference with or misuse of anything provided by the School in the interests of health and safety.
- Serious drug/alcohol related offences
- Serious breaches of the School's policy on use/misuse of the internet
- Serious breaches of the School's Code of Conduct
- Failure to disclose any relevant criminal offences prior to employment and any criminal convictions which occur during employment
- Any other act of misconduct of a similar gravity

The above lists are neither exclusive nor exhaustive and there may be actions which do not appear above but may nevertheless be the subject of disciplinary action.

In determining the seriousness of the misconduct, particular regard will be given to the circumstances of the individual case. Factors which can influence a decision as to the seriousness of the offence may include:

- the type, degree and frequency of the misconduct
- the consequences arising from the misconduct, and
- the level of responsibility of the employee concerned

Careful consideration will be given to the above factors in each case. What is regarded as misconduct in some cases may, in others, depending on the circumstances, be regarded as gross misconduct.

It is impossible to list every type of action which would result in disciplinary action being taken. The above lists are to give employees an understanding of the type of act which would result in disciplinary action and of the consequences of such acts.

MANAGER'S GUIDANCE

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MANAGERS' GUIDANCE

Staff Disciplinary Procedure (Misconduct)

1. INTRODUCTION

- 1.1 This guidance to the disciplinary procedure is based on precedent, best practice, statute and case law. It is a management document and does not form part of the Procedure. These notes attempt to set out the broad principles on which the procedure should operate and is not a comprehensive guide to all situations that might arise. Managers should seek appropriate advice and guidance.
- 1.2 The disciplinary procedure provides a formal mechanism for dealing with issues of misconduct. Typically, this may involve conduct which is potentially serious, has built up over time and/or where the employee has not responded to management advice, standard setting or letters of expectation.

Minor issues of misconduct should be tackled as soon as they arise as part of the normal management process, before recourse to the formal procedure, so that employee's are aware of the issue and have the opportunity to correct it. Formal action is only likely to be successful if managers can evidence that the matter has been brought to the attention of the employee, that they knew that the conduct was not acceptable and that they had been given the opportunity to correct it where appropriate.

Any management advice or setting of standards which arise informally should always be confirmed in writing so that there is a record of action taken to draw matters to the employee's attention. This should include any targets for improvement. Such letters will be used as evidence in any future formal disciplinary action.

- 1.3 It is important that managers interpret the disciplinary procedure, and apply it, consistently, correctly and fairly in all cases. Case law demonstrates the importance of following an approved procedure if dismissals are to be regarded as fair at Employment Tribunal.

2. SCOPE

2.1. Trade Union Officials

The requirement to consult a 'senior trade union representative' before taking formal action against a local trade union official is normal. This does not mean that a trade union official cannot be disciplined for legitimate reasons, whether or not breaches of rules occurred whilst carrying out Trade Unions duties, but is rather a matter of courtesy recognising the trade union's legitimate interests in such a sensitive situation and as a checking mechanism to ensure that employees are not disciplined for their legitimate trade union activities.

Where action involves a shop steward, the following level of union official should be consulted:

UNISON:	UNISON Branch Secretary
GMB:	GMB Convener
TGWU:	Regional Official
Teacher Professional Associations:	Regional Official

Where action involves a UNISON Branch official, the Regional Official should be consulted.

When consulting unions officials on these matters, the following information should be provided:

- the circumstances of the case;
- the name of the employee concerned;
- the broad nature of the allegations
- that there are reasonable grounds for suspecting that the misconduct has taken place.

3. ROLES & REPSONSIBILITIES

- 3.1 Governing Bodies should, where possible, delegate responsibility for making initial disciplinary sanction decisions, including dismissal, to the headteacher. Where delegated responsibility has been given to the headteacher, s/he may be accompanied at a hearing by one or more governors although the decision should be made by the headteacher alone. However, even where such delegation has been given there will be circumstances where the headteacher's involvement prior to a formal hearing means that s/he is not able to adjudicate objectively. In these circumstances, the Governing Body Disciplinary/Dismissal Committee should hear the case.
- 3.2 In the interests of natural justice, members of the Governing Body Disciplinary/Dismissal Committee and Appeals Committee should ensure that they are not involved in, nor have detailed knowledge of, a case prior to the formal hearing. Any such prior involvement could render their decision automatically unfair.
- 3.4 The Headteacher, or any member appointed to the Disciplinary/Dismissal Committee, whether or not they attend a particular meeting, should not be permitted to participate in any Appeal Hearing called to consider any appeal connected with the same case.
- 3.5 Under the provisions of education legislation, the Director of Education, or his representative, may attend any disciplinary hearing for the purpose of offering advice to the Disciplinary/Dismissal Committee at Community and Voluntary Controlled Schools and at Foundation and Voluntary Aided Schools where Advisory rights have been given to the Authority. In Voluntary Aided schools, the Diocese may also be afforded Advisory rights.
- 3.6 The Headteacher (except where he/she is the person concerned) is entitled to attend, for the purposes of giving advice, presenting the case and/or giving evidence, all proceedings of the Disciplinary/Dismissal Committee or Disciplinary/Dismissal Appeal

Committee relating to any dismissal of staff. However, the Headteacher is not entitled to vote on the matter.

4. REPRESENTATION

- 4.1 Meetings outside of the disciplinary procedure are intended to be informal, one to one discussions. However, some employees may request that they be accompanied by a trade union representative or colleague. Such requests for moral support should be allowed where practicable.
- 4.2 Employees should be allowed representation at all formal meetings and hearings. Where practicable this should include meetings at which staff are to be suspended. The onus is on the employer to offer the employee the opportunity of being represented, though it is the responsibility of the employee to make arrangements for his/her representation.
- 4.3 The role of the representative may be to:
- assist the employee in presenting his/her case;
 - respond on behalf of the employee;
 - confer with the employee during proceedings.
- It is however for the employee to determine the role of his/her representative.
- 4.4 There is a legal requirement to rearrange a formal meeting once, where either party or their chosen representatives cannot attend for a reason that was reasonably unforeseeable. The rescheduled meeting should normally take place within 5 working days of the original date although it is open to managers to negotiate with the employee and their representative.

5. INVESTIGATION

In child protection cases, reference should be made to guidance on dealing with child protection allegations against staff, which provides detailed advice about the conduct of such investigations.

5.1. Conducting an investigation

- 5.1.1 Investigations should be carried out in all cases. Clearly the extent and depth of the investigation will vary according to the level of misconduct. The purpose of the investigation is to gather facts to determine whether or not there is a disciplinary case to answer and, if so, to ensure that there can be a comprehensive presentation of the case at a disciplinary hearing. Adequate investigation should include making full enquiries, gathering as many relevant facts as possible, weighing up the evidence and making a recommendation for appropriate action on the balance of probability not, as in criminal court, beyond a reasonable doubt.
- 5.1.2 Investigations should normally be carried out by the employee's line manager and should commence as quickly as possible after the alleged offence (but having regard to child protection procedures where appropriate). The longer the delay the harder it will be to support the assumption that the offence was

viewed by the employer as being sufficiently serious to warrant disciplinary action, especially dismissal. On a practical level too, delay may mean memories fade, witnesses move and collaboration may take place etc.

5.2. Who should be interviewed

5.2.1 As far as practicable, all parties significantly involved in a potential disciplinary case should be interviewed, including of course the employee who is the subject of the investigation (refer to child protection procedures for guidance on the appropriateness of interviewing pupils). (see Appendix D(i) for an example invitation to an investigatory meeting letter)

5.2.2 A record should be made of interviews conducted, which may then be submitted as evidence to any disciplinary hearing which ensues. The status of any written witness statements is important. They may be either:

- an account, in the witness' own words, taken as soon as possible after the date of the incident/occurrence and signed and dated, or
- a statement compiled by the investigating officer as a record of the interview, which the employee should be asked to sign and date as an accurate record of their evidence.

All interviewees should be made aware that the notes/their statement may be seen by the employee who is the subject of the investigation.

5.2.3 As far as possible the investigating officer should ensure that any enquiries are not open to subsequent charges of collusion. For example, it is inappropriate to talk to individuals about an alleged incident and then send them away to think about it before taking a formal statement.

Witnesses should not be given information about the statements of other witnesses.

5.2. Outcome of investigation

5.3.1 Where an employee admits guilt, the investigation can be less detailed e.g. little may be gained from gathering statements from other witnesses, and a disciplinary hearing should be arranged as quickly as possible, which will concentrate on any mitigation the employee wishes to put forward. Care should, however, be taken not to exclude the possibility that by admitting to the original offence, an individual could be disguising broader or more serious issues of misconduct. The appropriate balance should be maintained. In some cases, where the issue is not one of gross misconduct, it may be possible to agree an appropriate outcome (i.e. level of warning) with the employee outside of the formal hearing process. Guidance on such 'agreed outcomes' is attached as Appendix E.

5.3.2 Those hearing a case may occasionally consider that the misconduct does not warrant, or that the evidence is insufficient to support, a formal disciplinary sanction. In these circumstances professional advice may be given in the form of a letter of expectation. This should set out the concerns, expectations for future conduct and help and support which will be made available. An example of a letter of expectation is given at Appendix F.

- 5.3.3 If, following the investigation, it is decided that no further disciplinary action is to be taken this must be confirmed in writing to the employee. The employee should be formally notified in writing that following an investigation it was found that there was no case to be answered in respect of the alleged misconduct and that all records, except this letter of the investigation will be removed from their personal file.

Note, however, that this will not apply where the allegation is one related to abuse of vulnerable people. Such records relating to allegations of abuse which were investigated, but not substantiated, will be retained. They should, however, be placed in a sealed envelope inside the personal file and marked 'confidential: contains disciplinary investigation information' and specify clearly the restricted categories of persons who have the authority to open and review the contents. These papers should never be removed from the file. (see 11.).

5.4. Criminal Offences

- 5.4.1 In many circumstances, it is not possible for the school to undertake its own investigation under internal disciplinary procedures until the end of the criminal proceedings, which can result in a member of staff being suspended for a considerable length of time. On the rare occasions where an internal disciplinary case may be considered prior to the outcome of criminal proceedings, no action must be taken without the express agreement of the Police and/or Social Services where appropriate.

- 5.4.2 One of the reasons for an inability to proceed is that the employer will not usually be given access to Police statements until after the criminal case has been heard.

Once Police action and/or a criminal process has been completed, it will probably be still necessary for the school to take its own action under its own procedures. There is no direct relationship between the criminal law process and the employment law process, not least because of the different standards and tests which apply. (see 5.1)

5.5 Custodial sentences

- 5.5.1 It is not automatically the case that an employee who is imprisoned is in breach of his/her contract. In most cases therefore it will be necessary for the school to conduct an investigation under its disciplinary procedures and to formally end the contract of employment where appropriate.

- 5.5.2 In cases of imprisonment, consideration must be given to the length and nature of the sentence applied and a decision made on an individual basis, about whether it is reasonable to proceed with a disciplinary case in the employee's absence and/or to keep the employee's job open (where dismissal for misconduct is not considered appropriate). In any case, the employee must be fully informed of the process; afforded every opportunity to make representations about the case and given the right of appeal where appropriate. Such cases are thankfully extremely rare, and advice should be sought on an individual basis.

6. SUSPENSION

- 6.1 In order to deal with allegations of misconduct, heads of establishment and governors have disciplinary powers and these powers extend to the ability to suspend staff pending the investigation process.
- 6.2 The effecting of suspension is always a difficult decision for managers to take. It can be distressing for the accused person and disruptive for the school. Although managers and staff understand that there is no implication of guilt against the member of staff, the perception of the individual and others can be otherwise and this can result in further pressures in an already tense situation. Nonetheless, if, at any stage, the following circumstances occur, it is, on balance advisable to remove the member of staff from their current situation.
- Where there is a risk of a re-occurrence of the misconduct.
 - Where the allegations are so serious that dismissal for gross misconduct would be a possible outcome. If the allegations are subsequently proven, it will be more difficult to argue the justification for summary dismissal for gross misconduct (which suggests the continued presence of the employee is intolerable) when the employee remained in post after the allegations were made.
 - Where allowing the member of staff to remain at work could hinder the investigatory process. (An example of this may be where the Police are interviewing children and there is a concern that they may be intimidated, albeit unintentionally, by the employee's presence or there is concern that the employee may try to influence them.)
- 6.3 However, suspension should never be an automatic response to an allegation. Initially, where suspension seems to be appropriate, alternative approaches should be considered. Where possible the employee should be removed from the particular class or area of work or given work to undertake at another site or at home. Ultimately however, where such alternatives are not possible, the member of staff may need to be suspended. Case Law has established that automatic suspension, without consideration of alternatives, can leave the employer liable to claims for damages for stress and defamation.
- 6.4 Where possible, an employee should be given due warning of the meeting at which they are to be suspended/required to continue working under alternative arrangements and invited to seek advice from, and bring, a representative. Such meetings will normally be conducted outside of pupil contact time. These procedures may not always be possible however, as by their very nature these decisions will need to be made quickly. At the suspension meeting the employee should be given as much information, including reasons and details of the subsequent procedures, as is consistent with not interfering with an investigation and as is allowed by the Police/Social Services where appropriate.
- 6.5 Where an employee is suspended or undertaking 'other duties', this should always be on full normal pay (sick pay where the employee has a period of certificated sickness). Details of suspension or alternative work arrangements should be confirmed in writing. It should be made clear that the suspension is a neutral act and not a disciplinary sanction. Model letters are at Appendix A.

- 6.6 Where the Chair of Governors suspends or arranges alternative work arrangements with the headteacher, the Governing Body and the LEA should be informed.
- 6.7 Suspension/alternate work arrangements should be reviewed where timescales are protracted.

7. DISCIPLINARY HEARINGS

Managers will be required to present written evidence to the hearing and this will be copied to the employee in advance of the hearing. A model letter of invitation to a hearing is at Appendix D(ii). Guidance for managers preparing for a disciplinary hearing are at Appendix G.

7.1 Allegations

In formulating the allegations it is important that sufficient details are given to enable the employee to properly prepare his/her own case, i.e. avoiding general or blanket allegations. Failure to inform an employee about a serious allegation forming part of the reason for dismissal is likely to render the dismissal unfair.

7.2 Documentation

Both parties may present documentary evidence and/or witness statements to the hearing to support his/her case. Any documentary evidence should be legible and originals should be made available at the hearing if necessary.

Copies of documentary evidence to be submitted by management should be included with the letter calling the employee to the hearing. Any employee documents should be given to those hearing the case at least 3 working days before the hearing. It is the practice for any evidence to be used at disciplinary hearings to generally be shared with both sides.

7.3 Witnesses

Witnesses may be called by either party and opportunity should be given for them to be questioned on their statements. Both the investigating officer and the employee should give careful consideration to whom they call as witnesses, limiting the numbers to the minimum necessary to support their case. Those hearing the case will need to exercise judgement in the event that large numbers of witnesses are being called who are giving similar evidence. A balance will need to be drawn between hearing all areas of evidence and witnesses simply repeating evidence of other witnesses already given. When each individual witness has given their evidence, they will withdraw from the hearing and only return if required by the panel to give further evidence.

In calling witnesses, the presenting officer should:

- Identify clearly the matters which are in the knowledge of the particular witness and what issues they wish to draw out
- Establish the link between these matters and the disciplinary allegation.

Witnesses may sometimes be apprehensive about the proceedings. Such apprehensive can be minimised by running through in advance the format of the hearing and how their contribution will fit in. It is important however not to 'coach' the witness on their evidence. It may be appropriate when introducing such witnesses at the hearing/appeal to state introducing such witnesses at the hearing/appeal to state that they are very nervous about these proceedings. Witnesses should be made aware that the hearing could take some time and they should avoid making other commitments.

7.3.1 Expert Witnesses

It is not anticipated that the use of expert witnesses will normally be required during a disciplinary process or hearing. Nonetheless, if such a situation were to arise, then either party wishing to use such an expert witness must notify the other party of their intentions.

The other party may, in response to this evidence, choose to instruct their own expert either to comment solely on the evidence provided by the initial expert or to give their own evidence on the issue under discussion itself. This latter approach may, in very exceptional cases (usually involving a late submission of medical evidence by an employee), require an expert witness to interview/examine the employee themselves in order to arrive at their 'expert' opinion and it is expected that such co-operation will be given. This could result in the hearing being postponed.

7.3.2 Hearsay evidence and use of Witness Statements

In certain circumstances, hearsay evidence may be taken into account. Employment Appeal Tribunal [EAT] 'rules' governing evidence by anonymous informants are:

- 'A careful balance must be maintained between the desirability of protecting informants who are genuinely in fear and providing a fair hearing of issues for employees accused of misconduct'.

Normally, the expectation must be that witnesses will give evidence in person and be ready to be questioned on it. Where this is genuinely not practicable, EAT guidance is:

- A full written statement should be taken from the informant.
- The employer should consider whether the informant has reason to fabricate allegations against the accused, because of a personal grudge or for any other reason.
- Further investigation should be undertaken with a view to obtaining corroboration.
- Where the informant refuses to give evidence in person at a disciplinary hearing, the employer should consider whether the disciplinary proceedings should continue if the informant's evidence forms a key part of the management case.
- If a decision is made to continue, the informant's written statement, with deletions if necessary to preserve anonymity, should be made available to the employee/representative. The person conducting the disciplinary or appeal hearing should interview the informant and form a view as to the weight to be given to the information. If the accused employee or his/her representative raises a relevant issue which should be put to the informant, the hearing should be adjourned for the person conducting it to make the necessary further enquiries of the informant.

- It is particularly important that full and careful written notes should be taken at the hearings and that the evidence of the investigation should be in the form of a written statement where possible.

7.4 General Points

7.4.1 Resignations

Where an employee resigns before the completion of disciplinary proceedings a formal note should be recorded on file outlining the nature of the allegations and the stage reached in the proceedings together with all relevant paperwork. The employee should be advised that the record of any investigation/allegation will remain on file. The employee should also be advised that any future reference would state at the time of resignation the employee was the subject of disciplinary proceedings and would outline the nature of the allegations.

7.4.2 Allegation involving vulnerable people

Where the alleged offence(s) involves abuse of vulnerable people, the evidence will need to be assessed as it may well require follow up action, police or audit involvement, recording on the Essex County Council List and Indices and/or referred to the Secretary of State (or General Teaching Council in cases other than those involving vulnerable people) and disciplinary action against any others revealed as culpable. If it is concluded that the employee should be placed on a local register or list the employee will be informed. In all cases that involve allegations relating to vulnerable people a conclusion must be recorded on file. Where any allegations are substantiated, replies to reference requests for future employment, must state the nature of the allegations and the conclusion of those that dealt with the case.

7.5 The Decision

All parties, other than the hearing panel and any Adviser, must withdraw from the room when the decision is being made.

7.5.1 In reaching their decision on any particular case, the panel need to take into account the evidence they have heard, including any mitigating circumstances and the need to ensure consistency and fairness. General points to consider are:

- Previous unspent warnings can be taken into account when determining the appropriate penalty for a further offence
- Dismissal of a senior employee may be justified where for the same offence a more junior employee is only warned
- Previous good conduct may justify a lesser penalty
- Change of employer attitudes may justify more severe penalties than those given at an earlier period
- Mitigating circumstances.

7.5.2 In making a decision, natural justice principles require that it must be shown that:

- Dismissal (or a lesser penalty) was imposed genuinely for the reason stated and not as a pretext
- The belief that the employee committed the offence was based on reasonable grounds, i.e. that on the evidence it was more rather than less probable that the employee committed the offence

- Such a belief was based on a reasonable investigation in the circumstances i.e. that the employer's investigation took place before the employee was dismissed and included the opportunity for the employee to offer an explanation
- That dismissal, given the circumstances, was within the range of reasonable responses which an employer can take in respect of an employee's misconduct.

A recommended framework for making fair decisions is at Appendix C.

8. OUTCOMES

Possible outcomes may be:

8.1. That there is no disciplinary sanction to be given...

...either because there are significant doubts of the alleged offence having happened, or because it was considered to be of too little consequence to merit a disciplinary sanction. In either case, all correspondence relating to the hearing should be removed from the personal file and destroyed. A formal letter should still be sent to the employee confirming the outcome. In cases relating to the care of vulnerable people all records should be retained on file as described in paragraph 5.3 and 7.4.2.

8.2. A first, final or first and final written warning

In which case the employee should be advised that any further disciplinary lapse (of the same or an unrelated nature) may result in further disciplinary action, including dismissal. A final written warning would normally follow on from a first written warning where there has been no improvement. A first and final written warning would normally be issued where the misconduct is serious enough to warrant a higher level of warning straight off.

8.3 Professional advice

Where the misconduct does not warrant, or the evidence is insufficient to support, a formal disciplinary sanction, those hearing the case may issue professional advice. (see 5.3.2)

8.4 Dismissal

If the decision is to dismiss the employee for gross misconduct, the employee will normally be summarily dismissed. If the employee is to be dismissed for a reason other than gross misconduct he/she should be given the notice required by his/her conditions of service and contract of employment. (NB: Notice should be issued and/or dismissal will take effect following the initial decision).

A decision to dismiss an employee from a Community or Voluntary Controlled school will necessitate notification to the Authority who, as the employer in law, will issue the appropriate notice of dismissal to the employee. In a Foundation of Aided school the dismissal notice should be issued by the Governing Body.

8.5 Gross Misconduct

Examples of gross misconduct are set out in Appendix A to the Disciplinary Procedure. The list is not exhaustive and there may be other examples of misconduct which constitute gross misconduct even if not listed. For example, under health and safety regulations, employees have a number of obligations which are not listed separately in the misconduct/gross misconduct list but could, nevertheless, amount to gross misconduct, e.g.:

- Failure to take care of their own health and safety and that of others who may be affected by their acts or omission at work
- Failure to use correctly all work items provided by the School, in accordance with the training provided and the instructions received to enable them to use the item safely
- Failure to obey the reasonable, lawful and proper instructions of a manager/supervisor
- Failure to co-operate with the School on health and safety matters

There is no set rule to determine whether or not something constitutes gross misconduct – actions viewed as gross misconduct in one area may, in another area not be considered so serious. Also, personal mitigating circumstances may also be significant enough to warrant a lower level penalty. A question to be asked however is whether or not, in the light of the employee's action and explanation, the employee's continued presence in work can reasonably be tolerated.

8.6 Consistency

It is important to be consistent in the penalties imposed for a disciplinary offence whilst at the same time having regard to the individual circumstances of the case. The guiding rule is for the employer to act consistently unless there is a valid reason in the circumstances for departing from normal disciplinary practice. The nature of the employee's job may be a factor in deciding on the level of penalty given.

Employment Tribunals (where cases are lodged at Tribunal) will consider whether inconsistency throws into question the fairness of the dismissal. Consistency does not always require uniformity of treatment of apparently similar cases. It would be appropriate in a 'group' situation to determine each employee's respective responsibility for the relevant incidents before deciding whether dismissal is justified, or some lesser penalty. A higher penalty may be justified because of greater degree of blame in that one of the employees gives no indication of mending their ways or because previous warnings had been given to one and not to another.

The fact that an employee admits his/her misconduct, assists the investigation and asks for a chance to re-build their career may, for example, result in a less serious penalty.

8.7 Spent warnings

Whilst 'spent' warnings should normally be disregarded for the purpose of future disciplinary cases, for other managerial purposes (e.g. recruitment) the warning(s) would remain on record and be taken into account as appropriate. Spent warnings should not be removed from the personal file.

The normal duration of a written warning is 12 months. However, the disciplinary procedure does allow for extended warnings, which will not normally exceed 5 years. Implicitly this allows a longer, or exceptionally, an indefinite duration of warnings, which may be considered in cases relating to, for example, the abuse of vulnerable clients.

Whilst previous lapsed warnings should not normally be taken into account for deciding the level of penalty after a new disciplinary charge is substantiated, there may be occasions where similar misconduct is repeated and the warning is submitted in evidence to indicate that previous misconduct has been brought to an employee's attention.

Similarly, there might be occasions where the employee's conduct is satisfactory throughout the period the warning is in force and then lapses very soon thereafter. When a pattern emerges, the employee's disciplinary record should be borne in mind and may be taken into account even if technically time has lapsed.

9. NOTIFICATION

9.4 Warnings

The wording of written warnings will vary according to the nature of the offence and/or circumstances. They should, however include:

- the decision of the hearing, the details and grounds of the complaint and details of what change in conduct is required of the employee;
- the nature and duration of any warning, and that these are given under part of the formal process, or where appropriate, notification of a dismissal, including any notice if applicable. (Notice/dismissal is effective from the date of this notification);
- confirmation of the employee's right of appeal and details of how this may be exercised.

□

An example letter is at Appendix D(iii).

10. APPEALS

The process in respect of appeals is set out in the Disciplinary Procedure. The Appeal process is an opportunity to correct any procedural flaws that may have occurred during the disciplinary process and the chair of the appeal panel will be one of the key witnesses at any subsequent Employment Tribunal.

The appeal is usually a re-hearing (except for example where the appeal is against the sanction only).

10.1 New evidence

New evidence relating to the original offence which may have come to light since the original hearing can be presented by either party. If substantial new evidence is submitted (particularly if it points to a possible dismissal finding) or if there is a view that more investigation should be undertaken, then the case should be deferred for that further investigation to be undertaken and the hearing reconvened.

Management should not use the appeal process to improve their case by adding material of which they were aware at the time of the original hearing but chose to discount.

10.2 Appeal decisions

10.2.1 The Appeal outcome may confirm, amend or reject the disciplinary action. In very limited circumstances, the level of penalty may be increased, i.e.:

- Where fresh and conclusive evidence has come to light since the original hearing and the employee has been advised of it and its potential to result in a more serious outcome at their appeal hearing
- Where, exceptionally, it is felt to pose an unacceptable risk (e.g. to vulnerable clients) to let the employee remain in employment, even with a final warning, on the strength of the previously confirmed evidence.

10.2.2 Any resultant dismissal however would be likely to be found unfair and such a course of action should therefore be exceptional and is not to be taken lightly. In making their decision, the appeal panel should bear in mind that they are assessing the facts on the basis of the civil burden of 'balance of probabilities'; and the outcome of any criminal proceedings (which are subject to 'beyond all reasonable doubt' principles) should not determine the disciplinary sanction ultimately applied.

10.2.3 Pending any appeals against dismissal the employee should be treated as dismissed and not receive any pay (other than any notice pay to which they are entitled)

10.2.4 Where the appeal panel decide to reinstate an employee the employee's service should be counted as continuous and in the case summary dismissal or where the appeal takes place after the expiry of notice, salary should be backdated to their last day of service. In the event that an employee has taken up other employment after their dismissal and before the date of the appeal hearing, any pay on reinstatement would be only up to the date of such other employment. If the dismissal is confirmed on appeal, the effective date of dismissal remains that set when the employee was dismissed. If a dismissed employee registers an appeal, it would be sensible to await the outcome of the internal appeal hearing before taking action to fill the employee's post on a permanent basis, as this may be seen as constraining the Appeal Panel's options. This is particularly the case where the job is a senior or specialist one where there is little or no scope for both the original and replacement post-holders to remain in the School's employment. This would not apply, however, pending an appeal to an Employment Tribunal.

11. RECORDS

11.1 A written record should be kept of disciplinary hearings. This does not have to be verbatim. The notes should be sent to the other party for agreement. If the notes are not agreed they should be annotated appropriately. Records of hearings should be on pink paper. Such records should not be shared with the Governing Body until after any appeal is complete.

- 11.2 The employee should sign and return a copy of any written warning as a record that it has been received and understood. A copy will be placed on his/her personal file together with a record of the disciplinary hearing.
- 11.3 Records should be kept of all meetings relating to a disciplinary matter where a case to answer was found (and in other cases involving vulnerable people. All such records should be treated as confidential and kept for no longer than is necessary under the Data Protection Act (7 years from the end of employment in most cases). Papers should be placed in a sealed envelope indicating who may have access to them and placed on the employee's file. (see also 5.3 and 7.4.2)

12. TIMING/LOCATION OF MEETINGS/HEARINGS

- 12.1 If either party or their representative is sick, or is unable to attend a hearing for a reason that was not reasonably foreseeable, management should arrange at least one further hearing opportunity. Where an employee is sick and facing disciplinary action, it would be sensible to refer the employee to the Occupational Physician to ascertain whether, although sick, the employee would nevertheless be able to attend a disciplinary hearing.
- 12.2 Where the employee is suspended or it is inappropriate for some other reason to hold a hearing on school premises, an alternative location should be used. The location should be reasonable in distance for the employee and his/her representative to travel to.
- 12.3 It is not usually appropriate, without the employee's agreement, to hold disciplinary meetings/hearing during school closure periods and they should, where possible, be held at a reasonable time of day. It is not appropriate for a hearing to run late into an evening or over an extended continuous period as this may impair the parties' and the panels' ability to remain focussed.

Where appropriate, reasonable adjustments should be made for those suffering ill health, a disability or for those for whom English is a second language. Such adjustments may include restricting the length of hearings in any one day, providing alternative format documentation, or providing other facilities appropriate to individuals' needs.

13. GRIEVANCES

- 13.1 An employee may raise a grievance during the disciplinary process. This may be because s/he feels that the action the employee has taken or contemplates is, or would be, unlawfully discriminatory; contrary to the employer's assertion, it is not being taken on conduct or capability grounds or for some other reason.
- 13.2 In such cases, where the written grievance is submitted prior to the appeal hearing, the subject of the grievance should be dealt with as part of the formal disciplinary hearing process either at the first or appeal hearing stage. The onus is on the employer to ensure that the matters raised in the grievance are appropriately dealt with through the disciplinary procedure and that any decision is fair and free of any taint of unlawful discrimination.

13.3 If however the written grievance is submitted after the appeal hearing, the matter should be dealt with separately under the schools' Grievance procedure as appropriate.

APPENDIX A(I) – MODEL SUSPENSION LETTER

Dear

I am writing to confirm that having explored all other options I feel that I have no alternative but to suspend you from your post as **(post)** at **(school)** with effect from **(date)**.

This is a neutral act and therefore implies no guilt on your part and will enable a full investigation to be carried out to consider allegations of gross misconduct against you, namely that you allegedly **(outline / details of allegations)**.

You will continue to receive your normal full pay during the period of suspension. Should you need to report any incidents of sickness during the period of suspension, your normal contractual sick pay entitlement will then apply, in accordance with the Occupational Sick Pay Scheme (i.e. full/half/no pay, depending on your individual entitlement). I would stress that no judgements have yet been made regarding your culpability in relation to the allegations.

I will contact you again in due course regarding any further action which may be required under the school's disciplinary procedure, a copy of which has been provided to you. In the meantime, I strongly recommend that you consult your Union or Professional Association representative (if you are a member) or obtain independent advice from alternative sources (e.g. a friend, your local Citizen's Advice Bureau or a solicitor).

If you wish to discuss the investigatory process in more detail, please contact **(name of investigating officer)**.

I am arranging for (name) to keep in touch with you at this difficult time in order to minimise any isolation you may feel while the necessary processes take place. **(name)** will not discuss the case with you but will keep you advised of events in school and copy any relevant paperwork for you, should you wish.

Please do not hesitate to contact me if you have any other concerns at the present time.

Yours sincerely

APPENDIX A(II) - MODEL LETTER - ARRANGMENTS PUT IN PLACE AS AN ALTERNATIVE TO SUSPENSION

Dear

Following our discussion on **(date)** I am writing to confirm the arrangements for your deployment with effect from **(date)**.

These arrangement have been put in place without prejudice and will enable a full investigation to be carried out to consider allegations of gross misconduct against you, namely that you **(outline / details of allegations)**.

The arrangements are as follows:

e.g. 1 - You will work at (location e.g. Home) undertaking a special project (details), reporting to (e.g. headteacher) on a weekly basis. You will refrain from having direct contact with pupils but will attend staff meetings outside pupil attendance times and non-pupil days. These arrangements will continue until further notice.

e.g. 2 – You will teach (particular class/group). You will not have contact with (particular pupil/groups). You will continue to attend all staff meetings etc. These arrangements will continue until further notice.

You will continue to receive your normal full pay during the period of alternative work arrangements. Should you need to report any incidents of sickness during this period, your normal contractual sick pay entitlement will then apply, in accordance with the Occupational Sick Pay Scheme (i.e. full/half/no pay, depending on your individual entitlement). I would stress that no judgements have yet been made regarding your culpability in relation to the allegations.

I will contact you again in due course regarding any further action which may be required under the school's disciplinary procedure, a copy of which has been provided to you. In the meantime, I strongly recommend that you consult your Union or Professional Association representative (if you are a member) or obtain independent advice from alternative sources (e.g. a friend, your local Citizen's Advice Bureau or a solicitor).

If you wish to discuss the investigatory process in more detail, please contact **(name of investigating officer)**.

(for those working away from the school premises) I am arranging for **(name)** to keep in touch with you at this difficult time in order to minimise any isolation you may feel while the necessary processes take place. **(name)** will not discuss the case with you but will keep you advised of events in school and copy any relevant paperwork for you, should you wish.

Please do not hesitate to contact me if you have any other concerns at the present time.

Yours sincerely

APPENDIX B – HEARING / APPEAL HEARING PROCEDURE

- o Briefing by an Adviser/Consultant
- o Appoint/confirm a Chairperson (if appropriate)
- o Invite both parties to enter the hearing.

1. Introductions: Confirm chief spokesperson for each party. Opening remarks.

The Case Against the Employee

2. Manager and/or Representative to present case (and call witnesses if appropriate)
3. Member of staff and/or Representative to ask questions of the Manager and/or Representative.
4. Hearing Panel/Headteacher to ask questions of the Manager and/or Representative.

Where a witness has been called and given evidence the member of staff and/or Representative may cross-examine the witness. The Manager and/or Representative has a right to re-examine and ask questions on any matter (and only any matter) arising from the cross examination.

The Employee's Response

5. Member of staff and/or Representative to present case.
6. Manager and/or Representative to ask questions of the member of staff and/or Representative.
7. Hearing Panel/Headteacher to ask questions of member of staff and/or Representative.

Where a witness has been called and given evidence the Manager and/or Representative may cross-examine the witness. The member of staff and/or Representative has a right to re-examine and ask questions on any matter (and only any matter) arising from the cross examination.

8. Manager or Representative to make closing statement.
 9. Member of staff or Representative to make closing statement.
-

10. Both parties to withdraw to allow the Panel/Headteacher to consider their decision.

[11. Both parties and witnesses may be recalled to clarify points of uncertainty already given in evidence]

[12. The employee may be invited to present any mitigation if the misconduct is found, before the committee considers an appropriate sanction. All parties should be present if mitigation is heard]

13. Both parties invited back to hear the Panel's/Headteacher's decision.

no further discussion or debate to take place.

14. Written outcome to be sent to the employee within 5 working days.

Appendix C

FAIR DISCIPLINARY (MISCONDUCT) DECISIONS

A RECOMMENDED FRAMEWORK COMMENDED TO ADJUDICATING COMMITTEES

SCHOOL _____ NAME OF EMPLOYEE _____ DATE OF HEARING/APPEAL _____

This form must be completed by each individual member of the disciplinary/appeal committee. Please write clearly.

		Evidence/Reason
<p>1. Having regard to the explanation put forward by or on behalf of the employee, do I believe that the employee has committed the misconduct alleged?</p> <p>If 'Yes' - what evidence/information is there to lead me to conclude that it is more likely than not that the employee did what is alleged? (Please detail)</p> <p>If 'No' – why have I reached this decision? (Please detail reasons)</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>2. Has there been as much investigation as is reasonable in the circumstances and have the requirements of the disciplinary procedure been properly complied with up to this point?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	

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 Reference: HR/NH

Disciplinary (Misconduct) Procedure

If the answer to question 1,2 and 3 above are 'Yes', this will amount to a finding that the employee has been responsible for the alleged misconduct.

	Yes <input type="checkbox"/> No <input type="checkbox"/>	Evidence/Reason
<p>3. Having regard to any mitigating circumstances, what is an appropriate disciplinary sanction to apply in the light of the relative seriousness of the misconduct?</p> <ul style="list-style-type: none"> • No formal sanction • Informal advice • Oral warning • Written warning (1st, 2nd) • Final written warning • Dismissal with notice • Summary dismissal 	Yes <input type="checkbox"/> No <input type="checkbox"/>	
<p>4. Am I satisfied that this decision is reasonable in all the circumstances?</p> <p><i>n.b. please comment why a lesser sanction would not be appropriate</i></p>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
<p>5. Am I aware of any comparable disciplinary cases?</p> <p>If yes, is the decision in this case consistent with other decisions?</p>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
<p>6. Am I completely satisfied that my decision has not been influenced by any extraneous or unlawfully discriminatory factors?</p>	Yes <input type="checkbox"/> No <input type="checkbox"/>	

I confirm that the answers I have given above are true to the best of my knowledge and belief.

Signed..... Print Name..... Date.....
 Headteacher/Governor

Appendix D(i) – MODEL INVITE TO INVESTIGATORY MEETING LETTER

Dear

DISCIPLINARY INVESTIGATION MEETING

Further to....., I am writing to inform you that you are required to attend an investigatory meeting on (day) at (time) at the school.

The purpose of the meeting is to investigate allegations that you:

.....

The investigatory meeting will form part of the school's formal disciplinary procedure (a copy of which has been provided to you/is attached) and you therefore have the right to be accompanied by a representative of a recognised trade union, friend or some other person. You should inform me prior to the meeting taking place, the name and status of any representative, if you are to take advantage of this option.

You should be aware that, following the meeting, I will be making a decision as to whether to proceed to the stage of a formal disciplinary hearing which could lead to a formal disciplinary sanction, *including dismissal**.

Yours etc.

* delete if not applicable

Appendix D(ii) – MODEL INVITE TO DISCIPLINARY HEARING LETTER

Dear

DISCIPLINARY HEARING

I write to inform you that you are invited to attend a disciplinary hearing on (date) at (time), at (venue).

The purpose of the disciplinary hearing is to consider a report of alleged misconduct on your part, namely that (.....details.....)
(or) exact details of the allegation are outlined in the enclosed report.

You should make all reasonable efforts to attend this hearing and it is your right to be accompanied at the hearing by a representative of a recognised trade union or some other person. It is also your right to call witnesses. It is your responsibility to arrange for your representative and witnesses to attend the hearing.

Should you decided to exercise the above rights you should notify the Headteacher at least 3 working days in advance of the hearing, the name and status of your representative and the names of your witnesses and a brief outline of the evidence they will present.

The Hearing will be conducted by the Headteacher/Governing Body Disciplinary/Dismissal Committee (names). The Committee will be advised by (name) from (advisors). The school will call the following witnesses (include brief outline of evidence they will give) (or) will not be calling any witnesses. I will be accompanied at the hearing by (name) from (Advisors).

You may if you wish, submit a written statement either direct or through your representative addressed to the Headteacher/Chairman of Governors. This must be received by the Chairman at least 3 working days in advance of the hearing.

You should be aware that one (the) possible outcome(s) of the disciplinary hearing is (are) (no further action, verbal warning, written warning, final written warning, dismissal).

Please also find enclosed a copy of the school's disciplinary procedure for your information.

Please contact the Headteacher/Chairman of Governors the first instance regarding any matters relating to this document.

Yours sincerely etc.

Appendix D(iii) – MODEL OUTCOME OF DISCIPLINARY HEARING LETTER

Dear

DISCIPLINARY HEARING (DATE)

I am writing to confirm the outcome of the disciplinary hearing held on (date).

On the basis of the evidence presented, I/we found the allegations substantiated. In particular I am satisfied that (detail of allegation(s)).

I/we took into consideration the mitigating circumstances put forward by you, namely: (detail mitigation e.g. service, provocation etc)

Notwithstanding the above, however, these allegations constitute (serious/gross misconduct) and I/we have decided that you are (given a formal written warning /dismissed) (length of warning/required future conduct/date of dismissal).

You have the right to appeal to the Governing Body Disciplinary/Dismissal Appeal Committee and should you wish to exercise this write you should write to the Chair of Governors within 5 working days of receipt of this letter, clearly setting out the grounds for your appeal.

Yours sincerely etc.

Appendix E(i) – AGREED OUTCOMES

Note: it is not appropriate to use agreed outcomes in cases where dismissal is a potential outcome and may not be appropriate in cases involving allegations relating to vulnerable people.

If, at the end of an investigation into a potential disciplinary issue, the employee accepts all the allegations made against them i.e. the facts of the allegation are not in dispute and the employee has accepted their fault then there is no need to automatically proceed to a disciplinary hearing.. What needs to be determined therefore is the level of sanction.

Agreed outcomes are only appropriate where both parties are agreeable to the process. Employees should be encouraged to seek advice from their representative. If either the employee or their representative is unhappy with a proposal for an agreed outcome, then the normal disciplinary process must be followed. Agree outcomes should normally be authorised by the Headteacher.

Where there is agreement to an agreed outcome as being the acceptable way forward for both parties, the following principles should be followed:

- Both parties must be in agreement to proceed in this way
- Agreed outcomes can only be considered for cases where dismissal is not a likely outcome
- Cases must not interfere with, or compromise 'due process' e.g. audit
- A meeting should be held at which both parties (i.e. the employee and representative and the investigating officer) will be present, together with an adviser as appropriate.
- At the meeting, all information relevant to the allegation(s) must be available and both parties must have a full opportunity to discuss all the issues, in accordance with the normal principles of natural justice.
- The meeting can be adjourned and reconvened at any time if, for example, there is a need to obtain more information.
- On conclusion of the meeting, the employee will be required to sign a written acceptance of his/her misconduct and the relevant disciplinary sanction proposed and that, on their basis of their acceptance, they will forgo their right of appeal.
- The headteacher should write to the employee to confirm the disciplinary sanction and get their written agreement to the outcome – (see standard letter attached).
- The disciplinary sanction issued, and accepted by the employee, will have the same status as those obtained via a hearing, except that there will be no right of appeal.
- All relevant documentation, including a record of the meeting, must be retained in the usual manner on the personal file.

Appendix E(ii) - MODEL AGREED OUTCOME

Dear

Agreement between (employee) and (name) School

I am writing to confirm the outcome of the meeting which you attended on.....and at which you were accompanied by your representative.

The purpose of the meeting was to consider the allegations that:

(enter details)

and to agree, in the light of your acceptance of these allegations, an appropriate outcome.

The purpose of this letter therefore is to confirm that you have been issued with a (type of warning) which will run from the date of this letter for a period of 'x' months for future disciplinary purposes.

During the meeting, you accepted the allegations made against you and, at the end of the meeting you indicated your acceptance of this warning.

I must advise you that any further misconduct could lead to further disciplinary action being taken against you, which, if substantiated, could result in dismissal.

On the basis that you have accepted the above misconduct and given that this agreement is a mutually acceptable outcome between both parties, you have accepted that you will forgo your right of appeal.

It is accepted by both parties that all matters which have arisen during the course of this meeting are confidential and should continue to be treated as such.

Please sign and date a copy of this letter to signify that you are in agreement with the above, and return to (name).

Yours sincerely etc.

Signed (Employee) ... Date.....

Signed (Headteacher) Date.....

Appendix F – MODEL LETTER OF EXPECTATION

Dear

Thank you for attending the meeting on **(date)**.

I thought it would be useful to record the detail of our conversation when we spoke about issues/concerns:

(Detail key issues)

I hope that you found the advice and guidance provided of some support. However, I now feel that it is appropriate to clarify in writing my expectations in respect of your future conduct and confirm that it will be necessary for you to adopt the following approach in future.

(Detail of expectations)

As discussed, continued support and advice is available in the following form:

(Detail of support available)

I will continue to monitor the situation and will discuss the matter with you ***(review date/timescale)***, but in the meantime if you have any concerns or difficulties you should speak to me immediately.

I do very much hope that you will take positive steps, but you should be aware that failure to do so could result in further action under the formal disciplinary procedure being taken against you.

Yours sincerely

Appendix G(i) – PREPARING FOR A DISCIPLINARY HEARING

DISCIPLINARY REPORT TO GOVERNORS

Front Page:	Marked “confidential” – include name of school and employee and date, time and venue of hearing
Contents Page:	Pagination – if is very important that each page is numbers for ease of reference during the hearing List of Appendices (documentary evidence)
Chronology of events: Summary list of dates of key events in the process.	
Introduction: Background information on the employee.	Post held, outline of job, length of service, position in school
The Allegation: Brief description of the allegation(s) in summary format.	Short statement Include date(s) Be clear, explicit and consistent in describing allegations Emphasis on level of seriousness
Manager’s Report: A full account of the case <u>in detail</u> usually in date order of events.	Running commentary of key events in date order (chronology) Include procedural steps & evidence these were followed. Use numbers/bullet points – ensure easy to read / follow Cross reference evidence with appendices
Recommendation:	Close report with final paragraph outlining nature/impact of alleged misconduct and make a recommendation of an appropriate sanction
Appendices: Index and attach all evidence as appendices.	Include all minutes, letters, files notes, witness statements, disciplinary procedures, contracts of employment etc.

Please ensure the report is clearly set out, using bullet points, headings etc. Ensure all pages are numbered visibly, preferably on the right hand bottom corner of each page.

Ensure all Appendices are clearly indicated by number or letter. Cross reference Appendices within the text of the report

For lengthy reports consideration should be given to the use of a ring binder/dividers to ensure all parties can easily follow the managers’ verbal presentation when this is linked to the documentary evidence(appendices)

When preparing a disciplinary report, have regard to the Burchell Test which the panel will be considering (see Appendix B).

Appendix G(ii) – PREPARING FOR A DISCIPLINARY HEARING

CONSIDERATIONS IN PREPARING TO PRESENT A CASE

- Know your case and be familiar with your report, appendices etc. In particular be clear about what the allegations are.
- You may assume that the panel will have read your report in advance of the hearing. However, at the hearing it is necessary to go through the case in details, drawing attention to relevant pieces of evidence. You may not feel comfortable reading your report verbatim, in which case you may wish to prepare a script.
- If the member of staff has submitted written evidence/documentation, read this carefully with your adviser and, if appropriate, prepare some questions for the member of staff and any witnesses s/he may be calling.
- You may call witnesses in support of any written witness statements, although caution must be exercised in the case of child witnesses. If you are calling witnesses, it is helpful for them to prepare a statement which you then ask them to read at the hearing. You, the employee and governors will be able to ask the witness questions. You may prepare a statement for witnesses but they must be happy with its contents and sign it as a true record. Where witnesses have been interviewed as part of the investigation, these minutes may be sufficient in terms of written evidence. You will need to brief witnesses about the procedure for a hearing and what areas they will/may be questioned on. You should not however, prime your witnesses. Ensure witnesses have a copy of their statements at the hearing.
- Be prepared to be cross examined on your evidence. Although you cannot anticipate exact questions, think about the key aspects of the evidence, and particularly about areas of dispute between you and the member of staff, and think about what questions you may be asked and what response you might give. Answer calmly and do not be tempted into an immoderate response even if provoked.
- You will be given an opportunity to make a closing statement. While this may be prepared in advance, you will almost certainly need to add to it on the day in the light of representations made by, or on behalf of, the employee.
- Ensure that appropriate arrangements are in place for the hearing. (see G(iii))
- Ensure that a competent minute taker is booked for the hearing. Separate advice is available for the note taker.

Appendix G(iii) – PREPARING FOR A DISCIPLINARY HEARING

HEARING ARRANGEMENTS CHECKLIST

- Plan the timing of the hearing bearing in mind:
 - the need for a 30 minute pre-briefing by the advisor with those hearing the case
 - the need for comfort breaks, including lunch where appropriate;
 - that it is not appropriate for a hearing to go on late into the evening.
- Book an appropriate venue in advance. It may be more appropriate to have the hearing away from the school premises (e.g. at a Curriculum Development Centre. Have regard to access issues for disabled persons.
- Ensure there are sufficient rooms to allow the committee, the manager and the employee to have separate confidential areas to wait.
- Ensure refreshments are available, including lunch in the separate waiting areas. Water should also be provided in the hearing room for all parties.
- The hearing room should preferably be set out as follows:



- Ensure that the reception staff know who to expect and which room they have been allocated.
- Ensure that there are no interruptions during the hearing.

For further information, additional copies of this document or to pass on your comments, please contact:

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